

U.S. Pat. App. Ser. No. 10/542,672
Attorney Docket No. 10191/3945
Reply to Final Office Action of January 6, 2009

REMARKS

Claims 15 to 34 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 28 to 34 were rejected under 35 U.S.C. § 101 as to the statutory subject matter requirement.

The rejections are traversed. The claims are in the accepted “Beauregard” claim format (as provided for by the Patent Office) and therefore need not be specific as to the type of computer readable medium, so long as there is a computer readable medium having a program that is executable by a computer. In the case of *In re Beauregard*, The Federal Circuit remanded the issue of whether a computer readable medium type claim was statutory to the Commissioner of Patents, who conceded that it was and therefore abandoned the Patent Office’s earlier position. Accordingly, the use of Beauregard claims – which need not specify a particular computer readable medium (as wrongly asserted in the Final Office Action) is well established Patent Office practice since the 1990’s. (See also MPEP). It is therefore respectfully requested that the rejections be withdrawn as to claims 28 to 34.

Claims 15 to 34 were rejected under 35 U.S.C. § 102(b) as anticipated by WIPO publication No. WO 00/78038 to Szeliski, (“Szeliski”).

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

The Szeliski reference concerns a system and method for manipulating a set of images of a static scene captured at different exposures (i.e., "bracketed" images) to yield a composite image with improved uniformity in exposure and tone. This is supposedly done by analyzing a set of bracketed images using a multi-dimensional histogram and merging the images via an approach that projects pixels onto a curve that fits the data (400-406). The desired composite image can also be produced by summing the pixel brightness levels across the multiple images and followed by an equalization process (704), such as averaging the summed pixel brightness values by dividing the summed value of each pixel set (i.e., groups of corresponding pixels from the bracketed images) by the number of bracketed images. A better result can be achieved using a histogram equalization process (710-720). (See Szeliski, Abstract).

Accordingly, Szeliski does not identically describe (or suggest) the feature in which “a frequency of the gray values which is the number of pixels within an image that have the gray values based on the total number of pixels of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant”, as provided for in the context of each of claims 15, 22 and 28.

In particular, the frequency of a gray value, in accordance with the present application, designates the number of pixels within one camera image that have this gray value based on the total number of pixels. (*Specification, p. 6, lines 11 to 14*). In contrast, according to Szeliski, the pixel set is made up of all the corresponding pixels from the

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bracketed images, where corresponding pixels are defined as pixels that represent the same portion of the depicted scene. (*Szeliski, p. 3, lines 13 to 16*). Notably, bracketed images will mean a set of images captured at different exposure levels. (*Szeliski, p. 2, lines 4 to 5 and lines 14 to 17*).

Thus, even if Szeliski might refer to counting the number of pixel sets having a plurality of bracketed images, this is wholly different than the presently claimed subject matter, in which the frequency of a gray value refers to number of pixels within a single camera image that have this gray value based on the total number of pixels.

Accordingly, Szeliski does not identically disclose (or suggest) the feature of adjusting the characteristic curve so that a frequency of the gray values which is the number of pixels within an image that have the gray values based on the total number of pixels of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant, as provided for in the context of the presently claimed subject matter.

Accordingly, claims 15, 22 and 28 are allowable, as are their respective dependent claims 16 to 21, 23 to 27 and 29 to 34 (which respectively depend from claims 15, 22 and 28).

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CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 3/30/2009

By:

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646